B is to hold in trust for C, and it is found after A's death that the conveyance was void, it would seem that B, as heir, should be held to have the land free from any trust, since he does not get the land directly by reason of the agreement.

When, however, B is fraudulent, the question is entirely changed. Then the American courts find no difficulty in raising a constructive trust for A in the first situation,[9] and for C in the second.[10] That this result should be attained is generally conceded, but the reasons usually advanced therefor are not especially satisfactory. The courts commonly say that they will not allow the statute to be made an instrument of injustice. But that is loose, and, as is shown above, hardly veracious. A text-writer suggests that equity thereby punishes the wrongdoer and takes away his ill-gotten gains.[11] But it is not one of equity's rôles to play assistant to criminal law. It is believed that the true explanation is that equity thereby gives specific reparation of B's tort. To accomplish this, it must give the intended *cestui* the beneficial interest he was to have, and thus is raised what is truly a trust by operation of law. Applying this to the third situation, we see that the position of the courts in making B, when fraudulent, a constructive trustee for C is entirely logical, except that courts sometimes go rather far to find this fraud. A similar result is reached in the fourth situation when B is fraudulent. Except for B's fraud, A would have made some other disposition of the land for the benefit of C, and in order specifically to repair the harm resulting from his wrong, B, though taking as heir, should be made a constructive trustee for C. It was so held in a recent case. *Crossman* v. *Keister*, 79 N. E. Rep. 58 (Ill.). This combination of facts is apparently novel, but the decision is a correct application of logical principles.

STATUTORY INDICTMENT IN A COUNTY OTHER THAN THAT WHERE THE CRIME WAS COMMITTED. — How far does the federal Constitution restrain a state from modifying its criminal procedure? A recent case raises the question whether a state may provide that indictments for lynching shall be found by the grand jury of a county adjoining the one where the crime was committed, and holds such a statute constitutional. *State* v. *Lewis*, 55 S. E. Rep. 600 (N. C.). The section of the Constitution which confers and defines the judicial power of the United States, and incidentally provides that the trial of all crimes except impeachment shall be by jury,[1] obviously applies only to the federal government. The same is true of the first ten amendments, including the Fifth and Sixth, which provide specifically for an indictment by a grand jury and trial by a petit jury.[2] These restrictions have not been extended to the states by the Fourteenth Amendment.[3] The question, then, is whether any particular modification is a denial of "due process of law" under that amendment.

The words "due process of law," as used in both the Fifth and Fourteenth Amendments, have been held equivalent to "law of the land" in

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[9] Brison *v.* Brison, 75 Cal. 525.
[10] Goldsmith *v.* Goldsmith, 145 N. Y. 313.
[11] 3 Pomeroy, Eq. Jurisp., § 1056 (3).

[1] Art. III. § 2.
[2] Barron *v.* Mayor, etc., of Baltimore, 7 Pet. (U. S.) 243; Brown *v.* New Jersey, 175 U. S. 172.
[3] Slaughter House Cases, 16 Wall. (U. S.) 36.

Magna Charta.[4] If, therefore, a particular procedure is not expressly or by implication forbidden by other parts of the Constitution, the fact that such procedure was a part of the English common or statute law at the time the Constitution was adopted is strong evidence that it is not a denial of "due process."[5] The present statute seems to fall in this class. True, a grand jury could not regularly inquire of a fact done outside the county for which it was sworn; but this rule was modified by some eighteen exceptions, the earliest of which date from Henry VIII.[6] Indeed, the statute in that reign which provided that counterfeiters, etc., might be indicted and tried for their offenses, committed in Wales, in the next adjoining county of England,[7] is exactly in point as to the present statute. Thus even if "due process of law" be taken to mean common law procedure at the time the Constitution was adopted, an extremely narrow construction, the present statute seems proper.

There is, it is true, some authority supporting the view just noted,[8] but the Supreme Court has taken one less rigid. Thus a state may substitute prosecution by information for prosecution by indictment,[9] and thereby eliminate the grand jury altogether. A simplified form of the indictment may be prescribed, so long as it charges the essential elements of the crime.[10] And even a provision for a petit jury of eight to try a felony is proper.[11] In state courts a provision for a grand jury of less than the common law number of jurors has been upheld.[12] It seems clear, therefore, that when the Constitution guaranteed to the citizen "due process of law," it did not crystallize the then common law procedure and adopt it as if such procedure had been specifically described. The provision leaves a wider scope. It was intended to protect the individual from the arbitrary exercise of the powers of government. But so long as the substantial rights of the citizen were not invaded, the forms by which he was to be protected might be modified to suit new conditions. So, even if the present statute were not proper as prescribing an ancient procedure, it seems clearly to fall within this general power.

CONTRACT BY STATE NOT TO DISCRIMINATE AGAINST FOREIGN CORPORATIONS. — Though it is beyond the power of a state to bargain away its police power[1] or its right of eminent domain,[2] by a line of judicial decision, not without emphatic and persistent dissent, it may irrevocably restrict or part with its power to tax.[3] Whether such contract be by general law or by

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[4] Den d. Murray *v.* Hoboken, etc., Land Co., 18 How. (U. S.) 272; Davidson *v.* New Orleans, 96 U. S. 97.

[5] Den d. Murray *v.* Hoboken, etc., Land Co., *supra.*

[6] See 4 Bl. Com. 303.

[7] 26 Hen. VIII c. 6.

[8] Jones *v.* Robbins, 8 Gray (Mass.) 329.

[9] Hurtado *v.* California, 110 U. S. 516; McNulty *v.* California, 149 U. S. 645.

[10] Caldwell *v.* Texas, 137 U. S. 692.

[11] Maxwell *v.* Dow, 176 U. S. 581.

[12] People *v.* Parker, 13 Colo. 155; Hausenfluck *v.* Com., 85 Va. 702.

[1] Laclede Gas Light Co. *v.* Murphy, 170 U. S. 78. See Freund, Police Power, § 362.

[2] See Lock Haven Bridge Co. *v.* Clinton County, 157 Pa. St. 379.

[3] Home of the Friendless *v.* Rouse, 8 Wall. (U. S.) 430. See Judson, Taxation, §§ 39–58.